REMARKS

Claims 1-3, and 5-19 are in this application and are presented for consideration. Claims 1, 8 and 15 have been amended. The claims have been amended to address the Examiner's objections, incorporate the Examiner's suggestions and to place the application in better form. Applicant thanks the Examiner for the careful reading of this application, for pointing out discrepancies and for providing suggestions.

The office action rejects claims 3 and 10 as being indefinite with regard to the term "parallelepiped". The rejection states that it is not clear how the sensor housing 7 in figure 1 can be defined as having a parallelepiped shape. The rejection then further states that a parallelepiped is defined as a solid with six faces, each of a parallelogram and each being parallel to the opposite face. Applicant is enclosing a sketch A with the six sides of the sensor housing 7 labeled with the letters A through F. As one can see from this sketch, side A is a parallelogram and substantially parallel to opposite face side B. Side F is shown to be substantially parallel to the opposite face side E, which is shown to be a parallelogram. Sides C and D are shown to be parallel to each other. The holder 6 is mounted on the side D. From the geometry of the front and side views of figures 1 and 2, a person of ordinary skill can deduce that the sides not shown directly are mirror images of their opposite face or side. Therefore the sides not shown are also parallelograms. Sides C and D are also parallelograms because their lengths and widths are equal on respective edges as shown by the front and side views. Therefore is applicant's position that claims 3 and 10 particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 15 has been rejected as being obvious over Wright '871 in view of O'Neil '843.

Claim 15 sets forth a mouthpiece which has a trapezoidal cross section portion. A holder is also set forth as having a partial trapezoidal shape substantially complementary to surfaces of the trapezoidal portion of the mouthpiece. Claim 15 then further describes the trapezoidal shape of the groove/holder as having the function of "firmly seating said mouthpiece into said holder".

The rejection uses O'Neil '843 to disclose the trapezoidal shape. Applicant has reviewed O'Neil '843, and finds no teaching nor suggestion of a trapezoidal shape having a function of firmly seating a mouthpiece into a holder. The rejection refers to column 3 lines 14 through 17 of O'Neil '843 to disclose providing a more secure fitting between the mouthpiece and the breath measuring device. Applicant has reviewed this portion of O'Neil '843, and notes that this portion describes a securing member. However this securing member does not provide a secure fitting between a mouthpiece and a breath measuring device. Instead this securing member is used to how hold a film window taut. It appears that this securing member and the taut holding of a film window is shown in figure 8 and also described in column 7 line 54 through column 8 line 25. Therefore the securing member can not anticipate the specific trapezoidal shape of a claim 15 that provides the firm seating of the mouthpiece in the holder.

Applicant further notes that O'Neil '843 describes a U-shaped flange 8 and a protrusion 12 for maintaining the gas sensor in the proper location. Since O'Neil '843 does not describe a trapezoidal shape for firmly seating a mouthpiece in a holder, and furthermore describes

separate structures which are not trapezoidal shapes for holding elements 3 and 4 together, O'Neil '843 cannot cause claim 15 to be obvious. A person of ordinary skill would have no incentive or motivation from O'Neil '843 to create a specific trapezoidal shape that would firmly seat a mouthpiece in a holder. Instead a person of ordinary skill in the art would be led away from the specific trapezoidal shape of claim 15 by the non-trapezoidal shaped structure of U-shaped flange 8 and protrusion 12 of O'Neil '843.

As one can see from the drawings, applicant's preferred trapezoidal shape is a tapered trapezoid. Applicant prefers the tapered trapezoid shape because the shape gives a wedging or jamming effect. As the mouthpiece is inserted into the groove, the slanted sides of the mouthpiece push against the slanted sides of the groove increasing the pressure between the sides and also increasing the friction between the mouthpiece and the groove. Applicant has found this increasing friction to be very beneficial for holding the mouthpiece in the groove. Furthermore, this friction is easily attained by the simple action of inserting the mouthpiece into the groove. Still furthermore, applicant has found that this particular trapezoidal shape is beneficial in the removing of the mouthpiece. An operator has sufficient strength to overcome the friction, and once the friction is overcome, the mouthpiece is easily removed from the groove. If the Examiner desires, claim 15 can be amended to set forth a tapered trapezoidal shape.

Independent claim 8 sets forth it that the receiving portion of the holder is complementary to the trapezoidal cross-section for the function of "firm seating of said mouthpiece in said holder". As described above, O'Neil '843 does not teach nor suggest any

shape having a function of firmly seating a mouthpiece in a holder. Claim 8 therefore also defines over the prior art, and cannot be obvious in view of the prior art. Claim 8 can also be amended to set forth a tapered trapezoidal shape.

Claim 1 sets forth that the holder has a shape which is complementary to the trapezoidal cross-section of the mouthpiece for flush mounting of the mouthpiece. Applicant finds no teaching nor suggestion in O'Neil '843 of a holder having a shape for a flush mounting of a mouthpiece. The rejection does not indicate how the shapes in O'Neil '843 provide a flush mounting. It appears that O'Neil '843 is silent with regard to any flush mounting. The rejection states that it would have been obvious to modify Wright '871 in view of O'Neil '843 in order to have a more secure fitting as disclosed in column 3 lines 14 through 17. As applicant has described above, this portion of O'Neil '843 does not disclose a fitting between a mouthpiece and a breath measuring device. Instead this portion describes fixing a film window. Therefore this portion of O'Neil '843 does not provide any incentive to incorporate any shapes from O'Neil '843 into Wright '871, specially for holding a mouthpiece to a breath measuring device. Claim 1 therefore further defines over the rejection.

The rejection of claim 1 also appears to indicate that a reason for obviousness is that the mouthpiece of O'Neil '843 can be sterilized for re-use or disposal after one use. Applicant notes that this feature is already present in Wright '871, and therefore this feature of O'Neil '843 does not add any benefit to Wright '871.

If the Examiner has any comments or suggestions which would further favorable prosecution of this application, the Examiner is invited to contact Applicant's representative by

telephone to discuss possible changes.

At this time Applicant respectfully requests reconsideration of this application, and based on the above amendments and remarks, respectfully solicits allowance of this application.

Favorable action on the merits of this application is respectfully requested.

Respectfully submitted
For Applicant,

By: _____
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TD:tf
71226.10
Attached: Sketch A

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 13-0410.

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DATED: March 15, 2006

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